

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

WINTER KING
Attorney
king@smwlaw.com

May 29, 2013

Via Certified Mail Return Receipt Requested

Lee G. Gibson, Executive Director
Regional Transportation Commission
of Washoe County
1105 Terminal Way Suite 108
Reno, NV 89502

Bob Perciasepe
EPA Administrator
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Catherine C. Masto
Nevada Attorney General
Office of the Attorney General
100 North Carson Street
Carson City, NV 89701

Ren Lohofener
Regional Director, Region 8
U.S. Fish & Wildlife Service
Pacific Southwest Regional Office
2800 Cottage Way Suite W-2606
Sacramento, CA 95825

Alan Tinney, Bureau Chief
Bureau of Water Pollution Control
Division of Environmental Protection
901 S. Stewart Street Suite 4001
Carson City, NV 89701

Garth Oksol, Project Manager
Regional Transportation Commission
of Washoe County
1105 Terminal Way Suite 108
Reno, NV 89502

Jared Blumenfeld
Regional Administrator, Region 9
Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Rebecca L. Palmer, SHP Officer
Nevada State Historic Preservation Office
Department of Conservation and Natural
Resources
901 S. Stewart Suite 5004
Carson City, NV 89701

Kristine Hansen, Senior Project Manager
Reno Regulatory Field Office
U.S. Army Corps of Engineers
300 Booth Street Room 3060
Reno, NV 89509

Regional Transportation Commission
May 29, 2013
Page 2

Re: 60-day Notice of Intent to Sue for Violation of Section 404 of the Clean Water Act—Failure to Obtain Permit for Discharge of Dredged/Fill Material into Waters of the United States

Dear Sir or Madam:

This firm represents the Upper Southeast Communities Coalition (Coalition), a non-profit organization whose members reside and recreate in communities near the Regional Transportation Commission of Washoe County, Nevada's proposed SouthEast Connector ("SEC" or "Project") and therefore will be severely impacted by its construction and operation. We write to inform you that, by proceeding with construction of "Phase I" of the SEC prior to obtaining a Section 404 permit—which, in turn, requires Section 401 certification, environmental review under the National Environmental Policy Act ("NEPA"), Endangered Species Act ("ESA") consultation with U.S. Fish and Wildlife Service ("USFWS"), and review under the National Historic Preservation Act ("NHPA")—the Regional Transportation Commission of Washoe County ("RTC") has violated the requirements of the Clean Water Act ("CWA"). This letter constitutes formal 60-day notice of intent to initiate litigation under the citizen suit provision of the CWA. *See* 33 U.S.C. § 1365.

We request that the RTC take immediate action to remedy this violation by ceasing construction of any portion of the SEC until the RTC has obtained the required Section 404 permit. Until now, the Coalition has not taken steps to institute legal action against the RTC because it had been informed by the RTC and the federal permitting agency, the U.S. Army Corps of Engineers ("Corps"), that Section 404/401 analysis, NEPA review, and USFWS consultation were imminent. As the months roll by without any action taken on these necessary approvals and construction of "Phase I" commences, the Coalition cannot wait any longer.

In fact, the permitting process seems to have gone in reverse in recent months. The RTC withdrew its applications for a Section 404 permit and the related Section 401 certification in September 2012 and has yet to submit new applications. Tellingly, these original applications described the Project as being a "major arterial" extending "from Veterans Parkway and South Meadows Parkway in the south, north to the intersection of Greg Street and Sparks Boulevard"—that is, the entire Project. *See* Application for Department of the Army Permit, SouthEast Connector, Washoe County, Nevada (May 31, 2011) ("May 31, 2011 Application") at 3; SouthEast Connector Preliminary 401 Water Quality Certification Application (June 1, 2011) ("June 1, 2011 Application") at 1. Now, however, the RTC has withdrawn those applications and has

actually begun constructing the Project without any federal review or approval. According to information provided to the public at the March 28, 2013 Public Information meeting, the RTC does not even plan to submit its new Section 404/401 permit applications for the Project until July 2013.

The RTC has apparently attempted to justify this blatant violation of federal law by calling one segment of the SEC "Phase I" and suggesting that no CWA permits are required for this initial phase because it does not require the placement of fill in any "waters of the U.S." The flaw in this logic is that "Phase I" is just one part of the SEC Project; it has no independent utility separate from the whole SEC. In fact, it is the quintessential "bridge to nowhere," extending a dead-end road over a river and agricultural land so that it will dead-end one mile further south at a little-traversed, two-lane surface street. The only reason for constructing "Phase I" is that it is a necessary portion of the SEC as a whole. The RTC's own website plainly acknowledges that these two phases are both part of the same SEC Project. As a result, the RTC must apply for and obtain its Section 404 permit before continuing work on "Phase I"—or any portion—of the SEC Project.

RTC's initiation of "Phase I" construction *now* is a blatant attempt to end-run the federal review and environmental analysis that must be completed before issuing a Section 404 permit. If the permitting process set forth in the CWA and its implementing regulations is to have any meaning at all, it must be conducted *before* the permit applicant has committed serious resources to, much less begun construction on, the project requiring the permit. If a developer could construct all portions of a project other than those directly impacting waters of the U.S. before even applying for a Section 404 permit, the Corps's analysis of less environmentally damaging alternatives and environmental effects, required under the CWA, NEPA, and the ESA, would be truncated and meaningless, surely not the result Congress had in mind.

Again, this letter is provided as formal 60-day notice under the CWA citizen suit provision, 33 U.S.C. § 1365, of our intent to file suit in federal court to enforce the CWA if the RTC does not act within the next 60 days to remedy these legal violations.

IDENTITY OF ORGANIZATION GIVING NOTICE

The name, address and phone number of the organization giving notice of intent to sue under the CWA is:

Regional Transportation Commission
May 29, 2013
Page 4

Upper Southeast Communities Coalition
4885 Sinelio Drive
Reno, Nevada 89502
Tel: 775-232-0122

Counsel for the organization giving notice is:

Winter King, Attorney
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Tel: 415-552-7272

BACKGROUND

In May 2011, the RTC submitted an application to the U.S. Army Corps of Engineers requesting approval of a Section 404 permit to discharge dredged and fill materials into waters of the United States as part of its construction of the SouthEast Connector in Washoe County, Nevada. The RTC subsequently applied to the Nevada Department of Environmental Protection for a related Section 401 certification.

As described in these permit applications, the SEC would be a “major arterial”—i.e., a six-lane highway extending from the intersection of Veterans Parkway and South Meadows Parkway in the south to the intersection of Greg Street and Sparks Boulevard to the north. The *entire* proposed roadway would be located within the Federal Emergency Management Agency (FEMA) Special Flood Hazard Area as well as both Zone I and Zone II Critical Flood Pools. In fact, it would bisect an area that has been designated by the Corps as a detention basin for flood waters from the Truckee River (the Truckee Meadows Flood Control Project). In an attempt to alleviate the “dam” effect of placing a major arterial through the heart of a detention basin, the RTC proposed to elevate the entire roadway and install more than one hundred culverts underneath. The Project would result in the loss of at least 3.4 acres of wetlands and other waters of the United States. In a recent public meeting, representatives of the RTC acknowledged that this proposed major arterial is not needed to address any current traffic congestion, but is intended to alleviate projected congestion in the future. *See Minutes of March 28, 2013 SouthEast Connector Community Open House Before the Regional Transportation Commission at 9-10.* In some places, the RTC has described the project benefit as “reliev[ing] congestion for 2030 forecast.” *See Meeting Boards for March 28, 2013 meeting.*

Scores of residents living near the proposed project site, as well as the U.S. Fish and Wildlife Service, Pacific Southwest Region, and the Washoe-Storey Conservation District (whose comment letters are attached at Exhibits A and B, respectively), objected to the RTC's permit application, expressing concerns about the road's flooding impacts, destruction of wetlands, impacts on birds and other species, loss of property value, air quality degradation and noise impacts. Commenters also questioned the need for a new 5.5-mile-long, six-lane highway, given the economic downturn, the bursting of the housing bubble, and the existence of a major arterial (S. McCarran Blvd.) which runs parallel to the proposed SEC and lies only 1.5 miles to the west of the SEC alignment. Members of the Coalition were among those commenters who objected.

Following this public outcry, in September 2012 the RTC withdrew its applications for a Section 404 permit and Section 401 certification. No environmental review had been disclosed to the public. No consultation had been held to analyze the proposed Project's impacts on endangered species or historic/cultural resources.

With no Section 404 permit in hand, and no permit application in the works, on November 21, 2012, the RTC approved a construction contract with Kiewit Western and Atkins Global for the construction of "Phase I" of the SEC. "Phase I," which had not been called out as a separate project in the RTC's original Section 404/401 applications, is nothing other than the northernmost one-mile stretch of the SEC. This one-mile stretch includes a bridge over the Truckee River and an overpass over Clean Water Way, dead-ending just beyond Clean Water Way. Clearing and grubbing for the improvements at Greg Street and Sparks Boulevard began in February. Grading and other earthmoving activities have occurred at Clean Water Way. At a neighborhood meeting on May 23, 2013, representatives of the RTC indicated that they were "10%" done with "Phase I." According to information presented at an earlier meeting, Intersection Improvements at Greg Street and Sparks Boulevard were not expected to be complete until September 2013; the Clean Water Way Overcrossing was not expected to be complete until October 2013; the Veterans Memorial Bridge (crossing the Truckee River) was not expected to be complete until March 2014; and the entirety of "Phase I" was not expected to be complete until July 2014. *See* RTC SouthEast Connector Phase I Board, Mar. 23, 2013.

Members of the Coalition have visited the site of "Phase I" over the last several weeks and have observed earthmoving equipment, cranes, and other construction activity there.

Meanwhile, the RTC has not yet submitted new applications for Section 404/401 approval. According to documents presented to the public, the agency does not even plan to submit these applications until July 2013.

STATUTORY FRAMEWORK

I. Section 404 of the Clean Water Act.

The Clean Water Act prohibits the discharge of fill material into waters of the United States without first obtaining a permit from the Corps. *See* 33 U.S.C. §§ 1311(a), 1344(a); 33 C.F.R. 323.3(a). “Waters of the United States” or “WOUS” include a wide range of waterbodies, including “interstate wetlands,” wetlands adjacent to navigable waters, and all other waters the “degradation or destruction of which could affect interstate or foreign commerce.” 33 C.F.R. § 328.2. It is undisputed that construction of the SEC will require discharging fill into waters of the United States, and thus a Section 404 permit is required. *See generally* May 31, 2011 Application. As part of that permit process, the Corps may not issue a Section 404 permit “if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.” 40 C.F.R. § 230.10(a). “[P]racticable alternatives include, but are not limited to[, a]ctivities which do not involve a discharge of dredged or fill material into the waters of the United States.” *Id.* at § 230.10(a)(2).

An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded or managed in order to fulfill the basic purpose of the proposed activity may be considered.

Id. at § 230.10(a)(2).

Where, as here, the proposed “discharge site” includes wetlands or other “special aquatic sites,” and the “activity associated with [the] discharge . . . does not require access or proximity to” wetlands to fulfill its basic purpose, the Corps must presume that practicable alternatives are available and will have less adverse impacts “unless clearly demonstrated otherwise.” *Id.* at § 230.10(a)(3). The Corps may not permit a discharge of dredged or fill material if it jeopardizes the continued existence of species listed as endangered or threatened under the ESA, or results in the destruction of critical habitat. *Id.* at § 230.10(b).

II. Other Federal Statutory Requirements Triggered by Issuance of Section 404 Permit.

The issuance of a Section 404 permit, in turn, triggers additional federal law requirements. *First*, the CWA requires any “applicant for a Federal license or permit to conduct activit[ies that] may result in any discharge into the navigable waters” to provide the permitting agency (here, the Corps) with a certification from the State in which the discharge will originate indicating that the discharge will comply with the effluent limitations and other requirements of the CWA. 33 U.S.C. § 1341(a)(1). In Nevada, such Section 401 certifications are processed by the Nevada Division of Environmental Protection. Because the SEC involves construction of 5.5 miles of new roadway adjacent to and across the Truckee River and Steamboat Creek, Section 401 certification is also required for the Project. *See generally* June 1, 2011 Application.

Second, the Corps’s decision to issue the permit is a “major federal action,” and thus the environmental impacts associated with the permit must be analyzed under NEPA. 42 U.S.C. § 4321 *et seq.*; 40 C.F.R. § 1500 *et seq.* “Major federal actions significantly affecting the quality of the human environment” require the preparation of an environmental impact statement (EIS). 42 U.S.C. § 4332(2)(C). Every EIS must describe the environmental impacts of the proposed action, unavoidable adverse environmental effects, and alternatives to the proposed action, among other issues. *Id.* Compliance with NEPA’s environmental review requirement alerts decisionmakers to the environmental impacts of their proposed action and thus allows them to prevent damage to the environment through changes to the project or alternatives. *See* 42 U.S.C. § 4321; 40 C.F.R. § 1502.1.

Third, because it is possible that the SEC could affect an endangered or threatened species, such as the Lahontan cutthroat trout and Cui-ui (*see* August 8, 2011 Letter from U.S. Fish & Wildlife Service, Pacific Southwest Region to U.S. Army Corps of Engineers at 2, attached as Exhibit A; July 29, 2011 Letter from Washoe-Storey Conservation District to U.S. Army Corps of Engineers at 7, attached as Exhibit B), the Corps must consult with the USFWS to ensure that issuing a Section 404 permit is “not likely to jeopardize the continued existence of [the] species or result in destruction or adverse modification of [their] habitat.” 16 U.S.C. § 1536(a).

Fourth, Section 106 of the NHPA prohibits a federal agency from engaging in any federal undertaking unless the agency first takes into account the effects of the undertaking on historic properties. 16 U.S.C. § 470(f). To comply with this mandate, the federal agency must consult with the relevant State Historic Preservation Officer and

affected Indian tribes. 36 C.F.R. § 800.2(c) (listing consulting parties). “It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.” 36 C.F.R. § 800.2(c)(2)(ii)(A).

All of these review and consultation requirements have one thing in common: they are designed to ensure that federal agencies, like the Corps, (a) consider the environmental impacts of the projects they permit and (b) do not approve projects with significant adverse environmental impacts if there are less damaging ways to achieve the projects’ goals.

As a result, all of this analysis and consultation must be completed *before* any permit or certification is issued, not after the project has already been approved and is under construction. In fact, federal regulations are abundantly clear on this point. Once NEPA review has been initiated, “no action concerning the proposal shall be taken which would: [1] Have an adverse environmental impact; or [2] Limit the choice of reasonable alternatives.” 40 C.F.R. § 1506.1(a). Once ESA consultation is initiated, the federal agency and the permit applicant are *prohibited* from making an “irreversible or irretrievable commitment of resources . . . [that] has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives” that could avoid jeopardizing the listed species or their habitat. 16 U.S.C. § 1536(d); 50 C.F.R. § 402.09. And the Section 106 process must be complete prior to the federal agency taking action (here, issuing a CWA Section 404 permit). 36 C.F.R. § 800.1(c).

III. Executive Orders Disfavoring Construction in Wetlands and Floodplains.

The Executive Branch has for decades recognized the value of wetlands to the nation as well as the dangers of development in floodplains. In Executive Order (“EO”) 11990, May 23, 1977, President Carter ordered federal agencies to take action to minimize destruction, loss, or degradation of wetlands, and to maintain natural wetland systems and species and habitat diversity. Agencies must implement NEPA and its public review process to ensure there are no practicable alternatives to new construction in wetlands, including dredging and filling, and that all practicable measures are adopted to minimize harm to wetlands.

In EO 11988, May 24, 1977, President Carter ordered federal agencies to take action to reduce the risk of flood impacts and restore and preserve floodplains' natural values through agencies' permitting activities. Agencies must implement NEPA and its public review process to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, and to adopt all practicable measures to minimize potential harm to or within the floodplain. Furthermore, "[a]gencies shall [] encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, *permits*, loans or grants." EO 11988 (May 24, 1977) (emphasis added).

By avoiding environmental review of the SEC in its entirety, the RTC is violating the spirit and purpose of these Executive Orders and directly thwarting the Corps's mandate to implement them.

NOTICE OF VIOLATION

The RTC is violating the Clean Water Act, 33 U.S.C. §§ 1311(a), 1344(a); 33 C.F.R. § 323.3(a), by engaging in construction of the SEC roadway project prior to obtaining a Section 404 permit required for the Project. According to information supplied to the public by the RTC, "groundbreaking" for "Phase I" of the Project occurred in December 2012; and "construction" on "Phase I" began in February 2013. According to publicly available documents, the RTC plans to construct a one-mile stretch of the SEC, including a bridge over the Truckee River, before obtaining a Section 404 permit for the Project. This violation of the Clean Water Act will be ongoing as long as the RTC continues actively constructing any portion of the SEC without an approved Section 404 permit.

The construction of "Phase I" of the SEC will limit the choice of reasonable and practicable alternatives available to the Corps once it receives the RTC's application for a Section 404 permit. Moreover, the "Phase I" construction may have adverse environmental impacts that will escape environmental review when the Corps undertakes its NEPA analysis and ESA/NHPA consultation. Of particular concern are impacts to Cui-ui and Lahontan cutthroat trout caused by disturbance to the Truckee River during the building of the "Veterans Memorial Bridge." Carson Wandering Skipper (endangered) and Steamboat Buckwheat (federally Endangered and Critically Endangered in Nevada) could also be threatened by the "Phase I" construction.

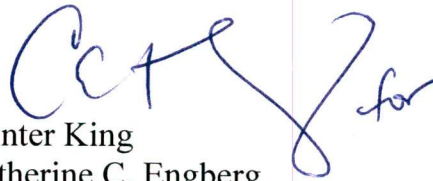
Courts have repeatedly overturned similar attempts to avoid full environmental analysis of a proposed project by "segmenting" it into smaller pieces. *See, e.g., Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1117 (9th Cir. 2005) (finding environmental group likely to succeed on merits of claim that Corps had "improperly constrained its NEPA analysis to the washes, rather than considering the development's effect on the environment as a whole" in reviewing Section 404 permit application for housing development); *White Tanks Concerned Citizens, Inc. v. Strock* (9th Cir. 2009) 563 F.3d 1033, 1042 (enjoining issuance of Section 404 permit pending adequate environmental review of all environmental impacts associated with the entire housing project made "viab[le]" by the requested permit). *See also Maryland Conservation Council, Inc. v. Gilchrist* (4th Cir. 1986) 808 F.2d 1039 (NEPA review could not be avoided by designing highway segment to stop short of park containing jurisdictional wetlands); *Named Individual Members of San Antonio Conservation Society v. Texas Highway Dept.* (5th Cir. 1971) 446 F.2d 1013 (segmented review impermissible where middle section of proposed highway would cross park); *Swain v. Brinegar* (7th Cir. 1976) 542 F.2d 364 (en banc) (segmented review impermissible where EIS only included 15-mile segment of 42-mile project).

NOTICE OF INTENT TO SUE

If the RTC does not act within 60 days to correct this violation of the CWA, by ceasing all construction on "Phase I" of the SEC until the RTC obtains approval of a Section 404 permit and Section 401 certification following adequate environmental review under NEPA, consultation under ESA, and review under the NHPA, the Coalition will seek relief in federal district court under the Clean Water Act's citizen suit provision, 33 U.S.C. § 1365(a).

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to read "CCE for", is written over the printed name of Catherine C. Engberg.

Winter King
Catherine C. Engberg
Joseph D. Petta

Regional Transportation Commission
May 29, 2013
Page 11

Exhibits:

- A. August 8, 2011 Letter from U.S. Fish & Wildlife Service, Pacific Southwest Region to U.S. Army Corps of Engineers
- B. July 29, 2011 Letter from Washoe-Storey Conservation District to U.S. Army Corps of Engineers

cc: Kimberly Rhodemyre, Upper Southeast Communities Coalition

484785.2

Exhibit A



United States Department of the Interior

Pacific Southwest Region FISH AND WILDLIFE SERVICE

Nevada Fish and Wildlife Office
1340 Financial Blvd., Suite 234
Reno, Nevada 89502

Ph: (775) 861-6300 ~ Fax: (775) 861-6301



August 8, 2011
File No. 2011-CPA-0114

Ms. Kristine Hansen
Reno Regulatory Field Office
U.S. Army Corps of Engineers
300 Booth Street, Room 3060
Reno, Nevada 89509

Dear Ms. Hansen:

Subject: Comments for the Southeast Connector Project Application for a Department of the Army Permit, Washoe County, Nevada.

The U.S. Fish and Wildlife Service (Service) is providing comments on the Application for the Department of the Army Clean Water Act (CWA) 404 Permit for the Southeast Connector Project. The proposed project includes construction of a high access control arterial road of approximately 5.5 miles in length. In conjunction, the proposed project includes channel restoration and reconnection to the historical floodplain of Steamboat Creek from South Meadows Parkway to its terminus in the Truckee River. The proposed transportation project varies from approximately 1,400 to 2,500 feet wide, and encompasses a total of 1,136 acres. Of this, a total of 3.41 acres of wetlands would be lost as a direct result of the project.

We have reviewed the CWA permit application and are providing the following comments pursuant to the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*); Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703); and the Bald and Golden Eagle Protection Act (BEGPA; 16 U.S.C. 668). Other fish and wildlife resources are considered under the Fish and Wildlife Coordination Act, as amended (48 Stat. 401; 16 U.S.C. 661 *et seq.*) and the Fish and Wildlife Act of 1956, as amended (70 Stat. 1119; 16 U.S.C. 742a-742j). Our comments are based on the information provided in the Environmental Assessment (EA), meetings held on February 24 and June 29, 2011, and our current knowledge of the fish and wildlife resources within and near the proposed project area. The Service provided written comments to the permit applicant on May 17, 2011, based on a review of conceptual project plans.

TAKE PRIDE
IN AMERICA 

General Comments:

1. Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*) (LCT) are not extirpated from the Truckee River. As discussed on February 24, 2011, threatened LCT currently occupy the Truckee River in and around Steamboat Creek (Service 2009). The Nevada Department of Wildlife (NDOW) will also be stocking an additional 37,500 LCT throughout the Truckee River in 2011.
2. Descriptions regarding the design, implementation, and post-construction monitoring protocol for stream restoration are missing. The Service's comments submitted to the applicant on May 17, 2011, strongly encouraged inclusion of monitoring and mitigation plans with the application for an adequate effects review.
3. Description of construction staging areas and equipment cleaning measures to prevent noxious weed infestation were not included, as requested by the Service in previous meetings and written correspondence from May 17, 2011.
4. Perennial pepperweed (*Lepidium latifolium*) (tall-whitetop) is a Category C noxious weed in Nevada. Chapter 555 (Sections 005-217) of the Nevada Revised Statutes authorizes the Department of Agriculture to investigate noxious weeds and require land owners or occupants to control noxious weeds. The Service recommends that the Corps of Engineers encourage the applicant to consult with the Nevada Department of Agriculture on regulatory issues and expectations.

"NRS 555.150 Eradication of noxious weeds by owner or occupant of land. Every railroad, canal, ditch, or water company, and every person owning, controlling, or occupying lands in this state, and every county, incorporated city, or district have the supervision and control over streets, alleys, lanes, right of ways, or others lands shall cut, destroy, or eradicate all weeds declared or designated to be noxious as provided in NRS 555.130, before such weeds propagate and spread, and whenever required by the state quarantine officer."

5. Due to the heavy infestation of tall whitetop in the project area, specific descriptions regarding the methodology of tall whiteop removal are necessary. Per Service discussions with the noxious weed expert at the University of Nevada Cooperative Extension (Dr. Susan Donaldson), the application of one or more herbicides is recommended to decrease viable roots. The Service recommends the application of 2, 4-D at flower budding (Young *et al.* 2002). Since the established whitetop is a dense monoculture in the project area, thatch should be removed prior to herbicide application so the herbicide does not become trapped on the dead overgrowth and can penetrate into the soil.

6. The large diameter taproots of whitetop do not stabilize the soil as well as the fine root mass of native species (e.g., salt grass, *Distichlis spicata*) that have been displaced (Donaldson, University of Nevada Cooperative Extension, pers. comm. 2011). Since the taproots do not bind the soil, erosion during a flood event is more likely. Should another flood similar to the 1997 event occur, impacts would affect the entire Steamboat Creek channel and floodplain downstream and potentially the Truckee River.
7. Bare ground measurements are crucial to assess plant establishment and potential open interfaces for future weed invasions. The Service recommends that litter (e.g., biomass of dead invasive plant material), rock, and gravel be included in the density, cover, and frequency measurements.

Specific Application Comments:

1. **Implementation/Construction, p. 19:** *"The wetlands to be constructed will be constructed at an elevation such that the back water flooding will inundate them to a depth of approximately 6 inches to one foot for at least one month during the growing season of normal precipitation years."*

A short, 1 month inundation period creates an ideal scenario for whitetop reinfestation. Given sufficient moisture in the first year, whitetop will continue to grow in dry sites in subsequent years (Donaldson 2007). Flooding research in Reno, Nevada, has demonstrated that whitetop exhibits an ability to tolerate and survive saturated conditions by developing adventitious roots and higher root porosity (Hongjun *et al.* 2002; Hongjun *et al.* 2005). This research indicates that flooding of whitetop in the high desert regions is not an appropriate control measure.

2. **Implementation/Construction, p. 19:** *"The wetlands will be revegetated using non-whitetop infested soils salvaged from elsewhere in the project area"*

The Service does not believe that clean, weed-free soil can be salvaged from the project area. The project area is highly invaded and the majority of soil found there likely contains viable whitetop seeds and/or roots. The Service recommends importing soil from outside of the Steamboat Creek area for all restoration activities.

3. **Implementation/Construction, p. 21:** *"The excavation will generally range in depth up to approximately two feet. The excavated soils will be disposed of off-site at an approved upland disposal area. In addition to facilitating the establishment of the desired ponding regime, the excavation will also benefit the enhancement by removing surface soils containing whitetop seeds and roots."*

The Service recommends transporting and disposing of this material in an area that is not invaded and/or is not near any water sources. Whitetop roots can be 10 feet or longer (Donaldson 2007). New plants can readily sprout from root fragments (Donaldson 2007) and spread through production of lateral roots (Renz and Blank 2004), thus removing the first 2 feet of topsoil may reduce the whitetop seed bank, but will not stop its spread.

4. **Constructed Wetlands, p. 24; and Enhanced Wetlands, p. 25:** *"The estimated vegetative cover within the constructed wetlands (p. 24) or enhanced wetlands (p. 25) (excluding open water/aquatic bed habitat) will average 50 percent and the trend over time will be toward increased cover."*

The Service recommends taking density, cover, and frequency measurements prior to and after revegetation efforts. Cover is most directly related to biomass, but cover can change dramatically over the course of a growing season. The change in cover over the course of a growing season and different observers estimating plant cover differently will make it difficult to compare results. Another disadvantage of relying on cover estimates is the sensitivity to changes in number (e.g., mortality and recruitment of plants) and annual biomass production. Cover estimates are unable to determine if the measured cover changes are due to plant biomass density or production changes. This has the potential to obscure mortality data. Accurate and precise mortality data in restoration monitoring is necessary to quantify success.

5. **Constructed Wetlands, p. 24 and Enhanced Wetlands, p. 25:** *"The plant communities in the constructed wetlands (p. 24) or enhanced wetlands.... (p. 25) (excluding open water/aquatic bed habitat) will be dominated by species similar to those occurring in the affected wetlands, excluding whitetop."*

Plant communities should have been identified during site visits and the wetland delineation. A working species list for restoration purposes should already be developed.

6. **Monitoring Protocol, p. 26:** *"Photo points will be established to qualitatively document trends in developing plant communities within the constructed and enhanced wetlands."*

Photo point data is not quantitative and should not be used alone to monitor trends. Statistically applicable data needs to be taken by collecting density, cover, and frequency measurements to enable trend analysis and restoration success.

7. **Monitoring Protocol, p. 26:** *"Vegetation monitoring will be conducted during the growing season of each monitoring year throughout the 10-year monitoring period."*

Ms. Kristine Hansen

File No. 2011-CPA-0114

Monitoring for whitetop needs to occur twice a year, every year. Whitetop can re-sprout even after multiple herbicide applications (Wilson *et al.* 2008). Re-sprouts need to be documented right away so that proper treatments can be applied.

The Service would like to extend our appreciation for the opportunity to discuss our biological resource concerns surrounding the Southeast Connector Project. The resource meetings were productive and the subsequent coordination between our agencies and the project applicant has been constructive. We look forward to continuing and improving upon this project to both positively affect species conservation and to develop transportation expansion projects responsibly. If you have any questions regarding this correspondence or require additional information, please contact me, Michael Cotter, or Sarah Kulpa, at (775) 861-6300.


Jill A. Ralston

cc:

Fishery Biologist, Western Region Office, Nevada Department of Wildlife, Reno, Nevada
(Attn: Matt Maples)
Area Extension Specialist, University of Nevada Cooperative Extension, Reno, Nevada
(Attn: Dr. Susan Donaldson)

Literature Cited:

- Donaldson, S. 2007. Identification and management of perennial pepperweed (tall whitetop). Special publication-10-07. University of Nevada Cooperative Extension, Reno, Nevada.
- Donaldson, S. 2011. Water Quality Education Specialist, University of Nevada Cooperative Extension, Reno, Nevada. Conversation with Sarah Kulpa, Botanist, and Michael Cotter, Fish Biologist, U.S. Fish and Wildlife Service, Reno, Nevada, on June 23, 2011.
- Hongjun, C., R.G. Qualls, and G.C. Miller. 2002. Adaptive responses of *Lepidium latifolium* to soil flooding: biomass allocation, adventitious rooting, aerenchyma formation, and ethylene production. *Environmental and Experimental Biology* 48: 119-128.
- Hongjun, C., R.G. Qualls, and R.R. Blank. 2005. Effect of soil flooding on photosynthesis, carbohydrate partitioning, and nutrient uptake in the invasive exotic *Lepidium latifolium*. *Aquatic Biology* 82: 250-268.
- Renz, M.J., and R.R. Blank. 2002. Influence of perennial pepperweed (*Lepidium latifolium*) biology and plant-soil relationships on management and restoration. *Weed Science Society of America* 18: 1,359-1,363.
- U.S. Fish and Wildlife Service (Service). 2009. Lahontan cutthroat trout, *Oncorhynchus clarkii henshawi*, 5-Year Review: Summary and Evaluation. Reno, Nevada. 190 pp.
- Wilson, R.G., D. Boelk, G.B. Kyser, and J.M. DiTomaso. 2008. Integrated management of perennial pepperweed. *Invasive Plant Science and Management* 1: 17-25.
- Young, J.A., C.D. Clements, and R.R. Blank. 2002. Herbicide residues and perennial grass establishment on perennial pepperweed. *Journal of Range Management* 55: 194-196.

Exhibit B

7/29/2011



**Washoe-Storey
Conservation
District**

Natural Resource
Conservation Service
1365 Corporate Blvd.
Reno, NV 89502

Tel: (775) 857-8700
ext. 131
Fax: (775) 857-8525

Board of Supervisors:

Ernest Nielsen
Chairman

Bret Tyler
Vice-Chairman

James Straffer
Secretary
County Appointee

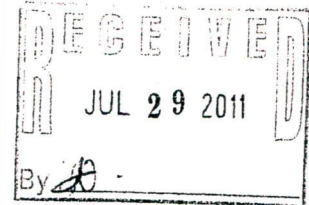
Kevin Roukey
Treasurer

Austin Osborne
Supervisor

OPEN
Supervisor

OPEN
Supervisor
City Appointee

Kristine Hansen, Project Manager
US Army Corps of Engineers, Sacramento District
Reno Regulatory Field Office
300 Booth Street, Room 3060
Reno, Nevada 89509



Public Notice Number: SPK-2010-01058
Reference: Regional Transportation Commission of Washoe County (RTC)
Subject: Public Notice of Permit Application

This letter serves as a response to the U.S. Army Corps of Engineers (USACE) Public Notice and Permit Application submitted by the Regional Transportation Commission of Washoe County (RTC) for the proposed South East Connector (SEC) project, including the Steamboat Creek restoration.

The applicant (RTC) states that the overall project purpose is to help maintain minimum Level of Service standards on the regional roadway network, as shown in the 2008 edition of the 2030 Washoe County Regional Transportation Plan, by providing improved connectivity between the South Truckee Meadows and the City of Sparks within the year 2030 timeframe. They further state that the basic project purpose is to construct a linear transportation project. Neither of these project purposes is water dependent.

The Public Notice further states on page 3, paragraph 8. Evaluation Factors, "All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conversation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, the needs and welfare of the people." We feel that the application and supplemental information provided by the RTC does not adequately address the twenty one public interest review criteria contained in Title 33 CFR, (Code of Federal Regulations).

We have provided our review comments to address these issues as contained in the public notice as follows:



- 1 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

59

We feel in that a Federal Permit has been requested by the RTC, and wetlands are being altered and in some instances these are mitigated wetlands and Steamboat Creek is being realigned, not restored, at a minimum the National Environmental Policy Act (NEPA) procedures must be required to assess the biological, physical, economic and sociological impacts of the proposed project. It is our opinion, that this can only accomplished through the preparation and review of an Environmental Impact Statement (EIS) prepared by the Army Corps of Engineers (ACOE) with the full public input, is adequate to analyze the full extent of these impacts.

At this time we are aware the a 404 (b) (1) Alternatives Analysis in accordance with 40 CFR Part 230, Section 230.10 (a) (4) which states..."For actions subject to NEPA, where the Corps of Engineers is the permitting agency, the analysis of alternatives required for NEPA environmental documents, including supplemental Corps NEPA documents, will in most cases provide the information for the evaluation of alternatives under these Guidelines. On occasion, these NEPA documents may address a broader range of alternatives than required to be considered under this paragraph or may not have considered the alternatives in sufficient detail to respond to the requirements of these Guidelines. In the latter case, it may be necessary to supplement these NEPA documents with this additional information." Also a biological assessment has not been submitted for review or to allow for the COE to initiate Section 7 consultation with the United States Fish and Wildlife Service (USFWS). In that this critical information has not been provided, it is our recommendation that the USACOE either withdraw the application, or deny the application until such information is provided for public comment.

It is our hope that our recommendations would enable a thorough public interest review and would allow the applicant the time to prepare the necessary documents to be provided.

The following contains our detailed comments on the evaluation factors.

CONSERVATION

The RTC has indicated that it will follow the Steamboat Restoration Plan. In reviewing the Steamboat Creek Restoration plan prepared for the Washoe/Storey Conservation District, most recently revised in November 1998, our plan calls for the restoration of Steamboat Creek in its current location, not a total realignment and blockage of old channels. The history of project maintenance and mitigation in this South Meadows area is not exactly commendable. The WSCD has been dealing with lack of maintenance and failed mitigation for many years. For example, south of Mira Loma, a sediment pond was developed as part of the mitigation for the Rosewood Lakes Golf Course project. This sediment pond was to be maintained by the City of Reno. The sediment pond was constructed, and then but maintained. That has caused serious long term affects on the surrounding communities during times of flooding when Steamboat Creek over tops and the sediment basin has no capacity for storage and flood flows cannot be directed toward the flood control channel because the culverts are full of sediment. Today, the sediment

- 2 -



Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(60)

pond is non functional. The native vegetation in the area has been replaced with tall white top (perennial pepper weed) due to a lowering of the channel due to head cut downstream of Mira Loma Drive. During the flood of 2005, the culverts under Mira Loma Drive were clogged and caused a backup of flood waters. The City of Reno upon notification, did remove the debris however, on-going maintenance is nonexistent. Also the lack of maintenance of mitigation measures for the South Meadows and Double Diamond projects has resulted in flooding issues and vector issues due to lack of maintenance and improper construction of mitigation areas.

Any vegetation or seeding that is planted for conservation purposes, such as soil erosion, fish and wild life habit should be coordinated with the National Resources Conservation Service to ensure success. Additionally, the native and endemic species should be utilized, and the white top be removed within 300 feet of the proposed roadway (both sides), and be maintained in accordance with recognized integrated Pest Management (IPM) techniques. Coordination efforts should be with initiated with the University of Nevada Cooperative Extension Service (UNCE) White Top Task Force. The contact is Dr. Sue Donaldson.

The funding of the maintenance should be a trust fund or other fiduciary funding, developed specifically for this purpose that will provide for long term monitoring and maintenance. Utilizing or relying on the City of Reno, the City of Sparks, Washoe County, or the RTC in conducting such maintenance have not resulted in satisfactory or successful results. The trust fund shall be developed and maintained at a financial level that insures that the Pest Management Plan can be continued in perpetuity. The National Resources Conservation Service (NRCS), USACOE and the University of Nevada Cooperative Extension Service (UNCE) and any other federal or state agencies that need to be involved should agree on funding needs.

ECONOMICS

In reference to "Economic Development Authority of Western Nevada" (EDAWN) the current population for the Greater Reno-Tahoe area is 621,152 (2009 est.) and according to the Nevada State Demographer the population is projected to be 596,290 in 2016, 657,629 in 2023, and 718,113 in 2030. With the projected population forecast (relatively flat for 20 years) the basis is the economic benefit to the community is questioned. Keep in mind that South McCarran (a north/south corridor which parallels the proposed SEC) which is .3 of a mile (1,056 feet) west of the proposed project is currently being widened to 6 lanes.

The applicant has not provided any information on economic analysis for any alternatives discussed in the Public Notice. Any economic data utilized for the other alternatives needs to be updated as well. Many of the alternatives were developed during a time when the main purpose of the project was to provide a link roadway from Lake Tahoe to Pyramid Lake for the Tahoe/Pyramid Link Project over 3 decades ago.

- 3 -



Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(61)

AESTHETICS

A: The mitigated wetlands within the City of Reno Municipal Golf Course (Rosewood Lakes Golf Course (RLGC) as well as the natural wetlands, sediment pond and banks of Steamboat Creek provide residents and local wildlife with a natural habitat. Residents of Herons Landing Subdivision and Rosewood Lakes Subdivision paid a premium for homes with this amenity. The developers of Rosewood Lakes as well as Herons Landing built the golf course as a natural amenity to these properties, and specifically to retain and pass flood waters.

The City of Reno, City Council, in Resolution No. 5231 dated June 11, 1996, unanimously supported this concept and removed the Tahoe-Pyramid Link right-of-way (now being called the Southeast Connector or SEC) from the Regional Master Plan. They stated ... "The Tahoe-Pyramid Link, as it is currently shown on the Master Plan, is no longer viable and has been rejected by the Regional Transportation Commission". The plan was developed by the RTC in early 1980's. We are not aware that that has changed from the inception or need for this project since that time.

B: The Steamboat Creek Restoration Plan states in its Vision Statement... "The Steamboat Creek Restoration Plan seeks to develop Steamboat Creek into a multi-faceted corridor. The vision presented would establish the creek as an amenity within future urbanized areas containing recreational trails and open space, as a stable, non-polluting stream channel, as a wildlife corridor and viewing area, and as a respected natural feature through the numerous small ranches and parcels which exist in close proximity to the creek today. Land within the creek should be showcased for the aesthetic and recreational enjoyment of future generations".

It further states... "In order to assess opportunities and constraints for stream restoration and determine a plan of action, the following project goals were identified and prioritized.

1. Improve the water quality of Steamboat Creek
2. Restore Steamboat Creek to a sustainable condition
3. Re-establish wildlife habitat appropriate for individual stream reaches
4. Re-establish vegetation appropriate for individual stream reaches
5. Combine stream restoration with recreation in areas designated for public access.

The Steamboat Creek Restoration Plan does not provide nor plan for a highway through the area, nor does it envision the degradation of the area by vehicle traffic.



- 4 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525

www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(62)

The RTC has failed to provide in their application a biological assessment. Ignoring this vital area of land use through the Steamboat Corridor is not in the public interest and public shall be provided with this information.

GENERAL ENVIORNMENTAL CONCERNS

In the development of this project, five alternatives were provided. These included: Widen and Improve Existing Streets Alternative, the Foothill Corridor Alternative, the Ridge Corridor Alternative, the Sparks Industrial Corridor Alternative, the Mustang Corridor Alternative and the Valley Corridor Alternative. RTC selected the Valley Corridor Alternative as their "preferred" alternative. The permit application did not provide any supportive documentation on the Valley Corridor as the "Least Environmentally Damaging Practicable Alternative (LEDPA)". This LEDPA is a requirement of EPA and should be provided by the RTC. The identification and evaluation of all alternative ways of meeting the purpose and need of this application requires a full analysis. The RTC should objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from a detailed study, provide reasons for their having been eliminated.

Additionally, the document "RTC Southeast Connector: Veteran's Parkway to Sparks Boulevard, draft dated 11/12/10", stated on page 12 and denotes a LEDPA for a selected alignment, not a corridor. This needs to be addressed in the environmental documents and alternatives analysis and fully investigated.

WETLANDS

A: Due to significant changes to the hydrologic regime that have occurred in the South Truckee Meadows, from development upstream on Steamboat Creek over that past 30 years, we feel that the ACOE Wetlands Delineation in the South Truckee Meadows is not current. Also no approved wetland delineation has been provided with the application or online at either the USACOE or RTC websites, for review. The ACOE s, (under this application) should be require the applicant to re-delineate the wetlands within the proposed project area to not only identify those wetlands being impacted, but to establish baseline data for any future indirect impacts from the project.. The ACOE has developed more extensive criteria for the delineation of wetlands in the Arid West. Nevada is included in this updated document. Because there is no delineation for review we are not aware if this document, "Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0) dated September 2008" was followed.



- 5 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

63

B: The Wetlands changes proposed by the RTC application will require a second alteration and movement of the existing wetlands that are part of the mitigation for the impacts from the Rosewood Lakes Golf Course project in this area. Any change in wetland location shall require that the wetlands be placed into service and provide assurance that the wetlands are self- supporting, sustained for a minimum of three years without human intervention.

C: The potential for future changes along Steamboat Creek revolve around continued urbanization of the Truckee Meadows. The typical changes that accompany development include a dramatic increase in the imperviousness of the ground surface. The imperviousness accompanies an increase in the percentage of paved surfaces, roof tops, and other man-made structures which increases both the amount and speed of surface runoff while at the same time reducing the contribution to the groundwater system through infiltration. Pollutant loading is also increased, particularly with respect to constituents like zinc (from galvanized roof tops and gutters), potassium, nitrogen, phosphorus (lawn fertilizer) and hydrocarbons. Stream sedimentation is also increased during and for a time following the construction phases of a new development, falling to near background levels as construction activity diminishes and developments mature. In addition to changes in the character of runoff, the flow regime in the channel can be altered by changes in water use. For example, a new surface water treatment plan for drinking water is proposed along Steamboat Creek, which, once constructed, may intercept much of the flow in the channel, treat it for domestic use, and deliver it to a distribution network. As a result, flows which would otherwise be left in the channel itself will be diverted into a network of pipes which are delivered to homes and ultimately will be directed through a network of sewer pipes to the waste water treatment facility at the confluence of Steamboat Creek and the Truckee River, effectively bypassing the channel altogether. Net effect of all the upstream changes has and will continue to result in more variability of stream flows in Steamboat Creek which in a direct manner affects the sustainability of the dependent wetlands.

What type of ground water monitoring program will be required of the applicant to ensure no long term indirect effects will occur? Also what types of remedial actions would be required if impacts do occur?

HISTORIC PROPERTIES

The prehistoric Paiute Indians occupied an area of approximately 4,000 square miles surrounding Lake Tahoe, from Honey Lake on the north to Sonora Pass on the south, and from the upper slopes west of the Sierra Nevada crest, east to the Virginia Range and the Pine Nut Mountains. The Paiute lifestyle involved seasonal travel to sites which provided various plant and animal food sources at various times of the year. This included use of the lower valley, primarily in the winter months, where villages of several families often camped together. The Paiute were exceptional basket makers, utilizing willow from valley drainages. It is known that the Steamboat Creek drainage supported

- 6 -



Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(64)

the Paiute lifestyle for encampment and thus many cultural sites occur along the Creek corridor.

The Washoe Paiute Tribe, in their Comprehensive Land Use Plan, 1994, has identified Cultural Resource Goals and Policies which deserve recognition within the Steamboat Creek Restoration Plan. The Steamboat Creek Restoration Plan was initiated by the Washoe-Storey Conservation District because Steamboat Creek has been classified as the largest nonpoint source of pollution to the Truckee River, resulting from bank erosion, geothermal mineral deposits and the cumulative impacts of human activities throughout the watershed. The plan was funded by the Nevada Division of Environmental Protection (NDEP) through a Clean Water Act and the Regional Water Planning Commission grant in order to promote voluntary efforts by the community to improve our water quality.

This Restoration plan strives not only to improve water quality and reduce pollutants but to encourage the development of Steamboat Creek as an open space recreational corridor. The potential exists to work with the Washoe Tribe to bring to public awareness the relevance and importance of Steamboat Creek in our region's history and improve water quality and at the same time reduce pollution.

In addition, there is a culturally significant historic site adjacent to the proposed road at what is called "the Narrows", the area between Butler Ranch North and the Double Diamond ea. This historic site is imbedded in the soil and could be damaged or destroyed in the construction process. RTC has failed to document the protection of said site for the benefit of future generations.

The RTC has failed to provide to the public in the application, a comprehensive study the purpose of this proposed road, and if constructed, how this road will reduce noise, pollution, improve water quality, and maintain the open space values of the Steamboat Creek Corridor as enjoyed by the native populations in years past, and today by residents of Washoe County.

FISH AND WILDLIFE VALUES

A: The development of the reaches of Steamboat Creek has had a detrimental effect on the wildlife values in the area. Three species are now on the endangered species list. These are: Cui-ui, Lahontan Cutthroat Trout, and Carson Wandering Skipper. The cumulative effect of increasing the cubic feet per second (cfs) of the stream channel has removed the natural food source for these fish. Additionally, the discharge of treated wastewater from the Truckee Meadows Water Reclamation Facility (TMWRF) has been recognized as a detriment to the habitat of these fish. The potential impacts to Wandering Skipper's have not been addressed by the RTC.



- 7 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525

www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(65)

In the proposed application, the RTC has indicated a new stream bed and entrance to the Truckee River. How is this action going to effect the future of Steamboat Creek, as it relates to the endangered species as well as other species that depend on the creek for subsistence? The U.S. Fish and Wildlife Service make use of some of the water for spawning of the endangered fish (the cui-ui) and to provide drought relief.

A biological study is necessary to determine the long term effects of the proposed project. Additionally, the RTC shall provide evidence that the changes necessary for this road, both during and after construction shall provide a sustainable food supply and access for these fish and that the survival of these fish, as well as other habitat, shall survive without the help of man, in perpetuity.

B: The Wild Free-Roaming Horses and Burrow Act of 1971 (Public Law 92-195) was enacted for the protection, management, and control of wild free-roaming horses and burros. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death. To accomplish this, they are to be considered in the area where presently found, as an integral part of the natural system.

In 1997, the Nevada State Legislature passed AB316 which protects horses under the Virginia Range Stray Horse Management Program, to include public safety and animal welfare, and the maintenance of a healthy and sustainable horse population in the Virginia Range. RTC should be required to determine the impacts of the road construction and its existence on the long-term viability of this Virginia Range herd.

The cumulative effect of the upstream construction has removed the ability of horses to obtain water from the Steamboat Creek. Again, the RTC has not considered in its application the ability of horses to access the Steamboat Creek for food, and most critically, water.

FLOOD HAZARDS

It is imperative to recognize that the newly formed Truckee River Flood Management Authority (TRFMA) is in the process of updating the delineation of critical flood zone 1. Therefore, the development of any projects before this updated study is completed and significantly impact flood hazard to the adjacent community.

The impacts from the 2005 flood event were significant, even though this was only a 30-35 year event. The volume of flood waters stored on the Butler Ranch North alone was estimated at 2000 acre feet. The RTC should provide evidence that the cumulative impact of upstream development will not increase the flood hazards to adjacent communities.



- 8 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(66)

FLOODPLAIN VALUES

The issue of hydrology within the Truckee Meadows needs to be addressed. The cumulative increase of impervious surfaces covering the flood plain with development has caused an increase of surface water. Two areas regarding this issue that we are aware of, where impacts have occurred are Herons Landing and Donner Springs. In 2000 none of the homes within Herons Landing had sump pumps. About 50 per cent of the homes are now equipped with sump pumps and some home have up to three pumps installed. This hydraulic pressure has developed from covering large areas with pavement and concrete which does not allow the natural infiltration and/or evaporation-transpiration (ET) to take place. Natural vegetation was removed and thus the water is being forced into other areas.

Donner Springs is the other area where the upstream development has impacted the water table. As the water table has risen, springs and groundwater are become critical challenges as each new water source presents itself above ground.

Another area is on Double R Parkway. A storage facility (Double R Storage) was built and a large area of land was covered with storage units and pavement. The homes on the perimeter of this facility had to install sump pumps to maintain the water level under their homes at an acceptable level.

According to the ACOE Draft Feasibility Studies done through the 1970's and 1980's, the ACOE advised that development not be allowed in the Flood Plains of the Truckee Meadows without a full upstream cumulative study determining the impact that urban development has had on Steamboat Creek and its implications. The Lennar/Butler Ranch development was in process of adhering to this requirement, however the development was stopped by Lennar and the Engineering Report was not completed.

It would benefit the entire region if the remaining acres were available to not just absorb water, but to store water during flood events. The construction of a new road will inevitably attract new development, whether it is residential or commercial, which will only heighten the flood hazard to the adjacent communities. Additionally, the simple four lane road will not necessarily stay in that configuration. More lanes, and light rail system has already surfaced as future projects for the SEC.

These are typical examples of issues that have resulted from the change in the hydrologic condition and land use in this area. We recommend that a detailed cumulative impact study for the entire 200 square mile water shed of Steamboat Creek be provided.



- 9 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525

www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

67

LAND USE

The RTC's proposed road is in conflict with existing land use plans. As previously noted that the City of Reno specifically resolved in 1996 to abandon the right-of-way between Pembroke Drive and Mira Loma (through the existing golf course) for what was then called the Tahoe-Pyramid Link and is now known as the SEC. WE have not been provided with any information that this amendment of the Master Plan remains unchanged.

The engineering and legal brief associated with Resolution 5241 needs to be reviewed and resolved. The RTC does not have the authority to build a transportation system in conflict with Regional Plan. Regional planning deals with the efficient placement of land use activities, infrastructure, and growth across a larger area of land than an individual city or town.

NAVIGATION

The issue of navigation can certainly apply to the issue of water supply to the Truckee River. Without the continued quantity of water supplying the Truckee River, the River can drop to levels that cannot support river rafting, kayaking, or canoeing. According to the USGS a low of the Truckee River experienced a level of 2.71 feet on 8/26/35. Today it is at 6.4 feet. The viability of recreation navigation would be severely impaired if the tributaries to the Truckee were eventually blocked, the channel velocity increased, and the natural flows were eliminated.

The RTC should provide the plans to the old stream bed, the level of the new stream bed, and a projected change in water velocity due to these changes. Additionally, if in a flood event, what measures are in place to protect these areas from total destruction?

SHORE EROSION AND ACCRETION

Shore (bank) erosion and accretion has been noted since the vista reef was dredged. This effectively lowered the stream bed and resulted in canyon walls up to eight feet in height. Additionally, this increase the stream flow rate that inhibited food supplies for the habitat and provided added sediment to the Truckee River. The movement of the stream bed as noted in the application has not provided any indication of how this stream is going to be flow into the Truckee River. If a dam is utilized, this will stop any migration of fish, additionally, who is going to clean the sediment that fills this dam or outfall. It has to be kept in mind that when the flood events occur a huge amount of sediment is moved downstream into the Truckee River.

The RTC should provide full details on this issue, not just a proposal to move the stream.



- 10 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(68)

RECREATION

Recreation is an essential benefit to the residents of Reno Sparks and Washoe County. Golf is one thing; however, many people enjoy the openness, the habitat, and Steamboat River itself. Our area is currently marketed as "America's Adventure Place", so in addition, the Truckee River is clearly a major local and tourism draw. The cities of Reno and Sparks as well as Washoe County have a very valuable asset and need to protect for its residents and tourists. The building of the SEC would degrade every aspect of what the area has been used for both in historic times as well as the present day, not to mention for the future. Someday, a bike/hike trail from Washoe Lake to Truckee River via Steamboat Creek would be a wonderful asset to the region. The building of a six lane highway in the middle of this expanse is certainly not the best use from a recreational standpoint.

City of Reno example of this was the corridor selection for Interstate 80. This was in process in the 1960's. The two main corridors were the northern route north of UNR, and the downtown route. The downtown route was selected, due to pressure from downtown gambling interests, but it was noted that it was only a four lane highway. As you can easily see, the selection was not the best from a land use perspective. The land-expansive interchanges, and highway width were much more than proposed, thus the decision was a very poor one in retrospect.

Based on this, if the SEC is built, and later the need for a six lane expansion is necessary, what happens to open space, to the flood plain and associated wetlands? Will they again be moved? A road once constructed eliminates the recreation area. This is due to noise, pollution, safety, to name a few. Before I-80 was built, we had parks, and open area between UNR and downtown. It is gone.

The RTC in its application must provide its forecast for any expansion for 2020 or 2050 above and beyond the currently proposed SEC.

WATER SUPPLY AND CONSERVATION

The Truckee Meadows aquifer has an estimated 500,000 acre foot of fresh water. This aquifer is being regenerated by both the Truckee River and Steamboat Creek watersheds. The cumulative effect of increasing the stream flow necessitates the study of the regeneration of the aquifer and its sustainable use. Presently, local governments in the region, including the Truckee Meadows Water Authority (TMWA), have numerous wells that are drawing on this aquifer. Historically, Steamboat Creek was a meandering stream and had very slow velocity. Due to the development of Double Diamond and other upstream development, a combination of events has been noticed. The stream velocity has increased, and the absorption rate (ground water regeneration) thus has been



- 11 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525

www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

69

impaired. While the SEC roadway will not have a large direct impact in infiltration, the associated development that will be fostered nearby will inevitably decrease water recharge and create even greater disparity between high and low stream flows. Low summer flows that are not maintained by ground water storage will very possible be so low that wetlands and riparian habitat cannot be maintained.

What is the long term effect of reducing the absorption of waters in this natural state, in lieu of the paved roads, homes and other development including storm drains that remove this natural process?

As a typical example -, Las Vegas had an aquifer that was extensive. In 1950 a well (located at Sunset Road and Pine Street) was drilled, and the artesian well provided 500 gallons per minute free flowing. It took 20 years to deplete this aquifer and today most of the water for Las Vegas is provided by the Colorado River. During this 20 years, golf courses, ranches, domestic and industrial use, depleted this aquifer. No one in Las Vegas had any regard to regeneration of this aquifer. This was obviously a non-sustainable action, and today, the results are evident insofar as Las Vegas, at one time had a rich resource that was depleted.

RTC needs to study and resolve any potential impacts that the roadway will have on aquifer regeneration. Subdivisions have been built with storm sewers that remove any infiltration entirely. This is evident on the east side of Hidden Valley. The City of Reno required that storm drains be capable of handling large flows of water (such as flash floods) from the mountain ranges to protect life and important property. In doing so; the capacity of the water to naturally to be naturally absorbed in alluvial fans has been eliminated.

The issue of water rights also needs to be addressed. Having water rights to a depleted resource is not in the best interests of all concerned, as can be seen by the considerable compensation that Washoe County is about to pay to residential well owners on the Mount Rose Highway.

WATER QUALITY

The toxic material issue in the construction area has been well documented. The area has a high concentration of boron, arsenic, and mercury. The distribution of these toxic chemicals has been elevated in the flood zone, due to high flood waters which carry and distribute sediment. In the 2005 flood, a typical example, flood waters distributed and displaced large amounts of earth and associated sediment. The 1997 flood had an even greater impact in this regard.

A toxic sampling was conducted on the Bella Vista Ranch North provided by Western Environmental Testing Lab, 992 Spice Island Dr., Sparks, NV 355-0202. The date of the sampling was 1/24/06. The Boron, Arsenic, and Mercury were found to be in excess of

- 12 -



Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525

www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

70

the limits set by the EPA. High levels of Boron (130 mg/Kg: TP-15); Arsenic (320 mg/Kg: TP-15) and Mercury (130 mg/Kg: TP-14).

As an observation, the lack of cotton wood trees and most other indigenous vegetation in the Steamboat Creek area, where such is evident on the Carson River, or Walker Rivers, is a clear indication that the subsurface toxicity plays a huge part in the establishment of any sustainable plants.

In that the RTC has not provided the 404(b)(1) requirements, and further, that the toxicity found in the proposed area, that the NEPA process should be initiated and a full EIS be completed to insure that this issue does not contribute to water pollution, and destruction of resident fish and wildlife as well as their habitat.

Steamboat Creek is defined as a "Regional Stream Environment." Many of the policies and objectives in the Water Resources apply to the creek. The regulations set by Washoe County and the City of Reno in the Regional Plan calls for the maintenance of water quantity and quality within the creek. The plan calls for the Regional Water Service and Facilities plan to be prepared by Washoe County, as the Regional Water Resource Management Agency (RWRMA) any development has to ensure that surface and groundwater sources are protected. Any development shall preserve the wet lands and it is the utmost importance that there is a prohibition of development in wetlands areas. That includes moving wetlands, and moving them again until they become non sustainable and provide no useful purpose to humans or wildlife. Much of Steamboat Creek flows throughout this type of area.

The Truckee Meadows Regional Plan has many of the same guidelines set by other agencies within the county. It is the goal of all to protect streams, creeks, wetlands, etc. in order to ensure protection for the future. These areas can provide a source of waster, or recreational areas such as bicycle paths, parks, or hiking trails. Thus Steamboat Creek can become an integral and aesthetically pleasing part of our urban community.

The RTC needs to provide the LEDPA to remove the assault on the flood plain and associated wetlands as well Steamboat Creek itself.

ENERGY NEEDS

The energy needs as well at the maintenance of this project in perpetuity cannot be under estimated. The costs of maintenance of this road and associated wetland, and stream reaches shall be estimated and in that a flood occurrence (>30 year flood) averages about every five years, the costs to the public are substantial. The LEDPA for each corridor shall weigh on this decision.



- 13 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525

www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

71

The normal procedure that has occurred on most new projects is build and leave. Maintenance is left to be done by some other party. An excellent example of this process is the wetland maintenance required by the Double Diamond Homeowners Association. The wetlands in that project area are a total disaster and the Homeowners Association (HOA) does not have the expertise or the financial reserves to handle this delegation. The City of Reno, the City of Sparks as well as Washoe County are responsible for creating these conditions, in that during the entitlement (the building permit) process, they assigned the responsibility for on-going maintenance to the HOA. The results are evident. Who is going to enforce these provisions? Or who will recognize that such assignments are destined to fail?

SAFETY

The issue of safety and increased traffic must be addressed. The SEC was approved by the RTC Board of Directors on November 21, 2008. The traffic studies and population estimates were based on population growth from 2000 to 2008. This period included the most rapid population increase ever seen in the Truckee Meadows. Estimates of future population increase are considerable less than the rapid increase used in the RTC's 2008 Regional Transportation Plan. During Stakeholders meetings, questions were continually being asked about obtaining an updated traffic study. Those questions were not answered.

At this point, a current traffic study shall be conducted and reviewed by the Nevada Department of Transportation (NDOT) or an independent consulting firm approved by NDOT. Traffic studies conducted by the RTC have been grossly over-estimated, but supported by the RTC Board as a justification to spend their considerable resources.

The traffic figures given by the RTC engineering staff based on zoning is not and will not be acceptable as a factual basis for the purpose and need for constructing the SEC.

FOOD AND FIBER PRODUCTION

The food production by local farmers is of utmost importance. Any depletion in the flow of water within the Steamboat Creek and its tributaries and the water allotted to farmers, ranchers and the Pyramid Lake Paiute Tribe has a direct effect on production and the associated water rights issue. The issue of toxic chemicals in the water does not support the ranching or farming needs utilizing the water of Steamboat Creek that is highly contaminated. The use of Truckee River water mixed with Steamboat Creek water has been used to dilute the toxic effects of Steamboat Creek.

Under the 404 permit, the RTC shall provide information satisfactory to the EPA that the dredging and filling operation as well as the movement of the stream location, does not impart any chemical toxicity to the water either in the stream flow, or to the resulting



- 14 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

72

regeneration of the aquifer. The sustainable life of humans, businesses, as well as habitat depends on clean water.

This should be made part of the 404 (b) (1) Permit, and shall be review by the EPA as well as the public.

MINERAL NEEDS

A: In that the toxic chemicals, boron, arsenic, and mercury have been well established in the project area, the issue of dredging and fill for the construction of the road base shall be reviewed. The determination that the fill and earth use is considered a hazard to the environment, that all fill material shall be secured from a clean source, and all materials removed shall enter a "HAZMAT" site for proper disposal. This issue should be controlled by the EPA under their direction. This critical issue cannot be left to the RTC and/or a paid contractor.

This issue shall be part of the 404 permit process. Again, the RTC has not provided any details on the dredge and fill requirements, and the existence and use of toxic soils within those areas.

CONSIDERATIONS OF PROPERTY OWNERSHIP

The Rosewood Lakes Golf Course (RLGC) is owned and operated by the City of Reno. Further north, the property is owned by the University of Nevada (1054 acres). The Mayor, Robert Cashell, of Reno has stated that he is in favor of the removal and possible relocation of nine of the eighteen holes at the RLGC in order to make way for the SEC. This position by Mayor Cashell has been noted, since his family owns the Alamo Truck Stop (1950 E Greg St, Sparks, NV 89431), and they would economically benefit by the construction of the SEC. Mayor Cashell has been adamant that this road shall be built as all costs. The Mayor of the City of Reno shall abstain from voting on any action concerning the SEC. (Reference: 5CFR 2635.702 - Use of public office for private gain; U.S. Supreme Court decision on the Nevada Commission on Ethics v. Carrigan, June 13, 2011) It is also suggested that all prior votes by Mayor Cashall on this project be investigated.

THE NEEDS AND WELFARE OF THE PEOPLE

The needs and welfare of the people was certainly recognized by the Reno City Council in 1996, in amending the Master Plan, by abandoning the right-of-way between Mira Loma and Pembroke Drive for what was then called the Tahoe-Pyramid Link but is now known as the SEC. The arguments provided the CFA, the City's consulting firm on the issue, were direct and to the point.



- 15 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

73

The issue of needing an additional North-South connector that parallels McCarran Boulevard has not been addressed fully. The traffic that McCarran supports is not congested, and in addition, the RTC is expanding this arterial from four lanes to six lanes at this time. The distance between McCarran and the proposed SEC is a mere .3 miles.

The compelling need for this SEC has not been convincingly established, and its purpose is vastly overshadowed by its negative environmental and aesthetic impacts.

Sincerely,



Kevin J. Roukey
Washoe/Storey Conservation District



- 16 -

Washoe-Storey Conservation District

1365 Corporate Blvd. - Reno, NV 89502 - Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION - DEVELOPMENT - SELF-GOVERNMENT

(74)

REFERENCES:

- 1) Economic Development Authority of Western Nevada (EDAWN), Public Domain:
www.edawn.org
- 2) City of Reno, NV; City Council; Resolution No 5241, approved 11th day of June 1996
(with associated engineering and legal reports)
- 3) RTC Publication dated 12/5/2008 "History of the Southeast Connector (SEC) Project";
Public Domain Council on Environmental Quality Executive Office of the President "A
Citizen's Guide to the NEPA" December 2007
- 4) US Army Corps of Engineers, "Regional Supplement to the Corps of Engineers Wetland
Delineation Manual: Arid West Region (Version 2.0)"; ERDC/EL TR-08-29 dated
September 2008.
- 5) Western Environmental Testing Lab, 992 Spice Island Drive, Sparks, NV: Project 05-
23105-03, Butler/Bella Vista Ranch – "Sample Location Map, for boron, arsenic,
mercury and associated levels found."
- 6) RTC Publication dated 11/12/2010, "Southeast Connector: Veteran's Parkway to Sparks
Boulevard"
- 7) Council on Environmental Quality Executive Office of the President "A Citizen's Guide
to the NEPA" December 2007
- 8) "Considering Cumulative Effects Under the National Environmental Policy Act",
Council on Environmental Quality, January 1997.



- 17 -

Washoe-Storey Conservation District

1365 Corporate Blvd. – Reno, NV 89502 – Business (775) 857-8500 ext. 131 - Fax (775) 857-8525
www.wscd.nv.gov

CONSERVATION – DEVELOPMENT – SELF-GOVERNMENT

75

